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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,816	03/07/2002	Michael P. Ferraioli	FERR-0001	8009

23550 7590 09/08/2003

HOFFMAN WARNICK & D'ALESSANDRO, LLC
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ALBANY, NY 12207

EXAMINER

SMITH, JAMES G

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 09/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

10/092,816

Applicant(s)

FERRAIOLI, MICHAEL P.

Examiner

James G Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-30 and 32-34 is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-11, 13-16, 18, 19, 30, and 31 is/are rejected.
- 7) ☒ Claim(s) 6, 12, and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see paper 6, filed 6/2/2003, with respect to Claim 17 have been fully considered and are persuasive. The rejection of Claim 17 has been withdrawn.
2. Applicant's arguments, see paper 6, filed 6/2/2003, with respect to the rejection(s) of claim(s) 1-3, 18, and 19 under 35 U.S.C. 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Wickers (1,690,516) and Wilkerson (6,283,342).
3. Applicant's arguments, see paper 6, filed 6/2/2003, with respect to the rejection(s) of claim(s) 4, 15, 16, and 19 under 35 U.S.C. 103 (a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Wickers (1,690,516) and Wilkerson (6,283,342).
4. Applicant's arguments, see paper 6, filed 6/2/2003, with respect to the rejections of Claims 20-22 have been fully considered and are persuasive. The rejection of Claims 20-22 has been withdrawn.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 1-5, 7-11, 13-16, 18, 19, 30, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wickers (1,690,516) in view of Wilkerson (6,283,342). Wickers discloses a footwear donning device with a carriage suitable for holding footwear being donned. The handle of Wickers is not specifically taught as being flexible, but is disclosed as being substantially long to prevent a user from having to stoop over when donning footwear. Wilkerson teaches an elongated handle in combination with another footwear donning device, which could be constructed from a number of materials so as to have the necessary strength and desired degree of flexibility. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a handle as taught by Wilkerson in combination with the footwear donning device of Wickers to make the device easier to use. With respect to Claim 2, the carrier plate of Wickers device has a pair of opposing sides extending beyond the fore handle and the carrier plate has a rounded end. With respect to Claims 3 and 4, it would have been obvious that the opposing sides may be chosen to be about 4 inches apart since applicant has presented no evidence of the criticality of this claimed range (viz. the range extending from a small amount less than 4 inches to a small amount greater than 4 inches). In re Hoeschele, 406 F.2d 1403, 160 USPQ 809 (CCPA 1969). Similarly it would have been obvious that the carrier plate may extend beyond the fore handle by at most approximately 2.5 inches since applicant has presented no evidence of the criticality of this claimed range (viz. the range extending from an amount less than 2.5 inches to a amount approximately equal to 2.5 inches). In re Hoeschele, 406 F.2d 1403, 160 USPQ 809 (CCPA 1969). With respect to Claim 5, the footwear donning device has two hook lobes (detail 12). With respect to Claim 7, there are opposing joints attaching each hook lobe to the carrier plate. With respect to Claim 8, the hook lobes each have a curved

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portion and a rounded portion extending beyond the joint attaching the lobe to carrier plate in the direction of the fore handle. With respect to Claim 9, the joints are flexible. With respect to Claim 10, it would have been obvious that each joint may be less than approximately 0.75 inches long since applicant has presented no evidence of the criticality of this claimed range (viz. the range extending from an amount less than 0.75 inch to a amount approximately equal to 0.75 inch. In re Hoeschele, 406 F.2d 1403, 160 USPQ 809 (CCPA 1969). With respect to Claim 11, the footwear donning device (detail 5) serves as a horn also which assists in removing footwear. With respect to Claim 13, the horn portion also assists in donning a shoe. With respect to Claim 14, the device of Wickers does not specifically teach the presence of a hole for enabling the device to be stored, but the handle portion of Wilkerson has a loop handle portion that would provide a suitable hanging portion for storing the shoe donning device. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a loop portion on the handle on the device of Wickers as taught by Wilkerson to enable the device to be easily stored. With respect to Claim 15, it would have been obvious that the fore handle may be chosen to be chosen to have a length of about 9 inches since applicant has presented no evidence of the criticality of this claimed range (viz. the range extending from a small amount less than 9 inches to a small amount greater than 9 inches). With respect to Claim 16, it would have been obvious that the device may be chosen to have a length of about 28 inches since applicant has presented no evidence of the criticality of this claimed range (viz. the range extending from a small amount less than 28 inches to a small amount greater than 28 inches). With respect to Claims 18 and 19, sheet metal is said to make the device of Wickers attached to the handle portion, but Wilkerson teaches a footwear donning device being made from various

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plastics decreasing weight and cost and would be a suitable modification to the device of Wickers to make the device lighter and cheaper. With respect to Claim 31, the carriage of Wickets being made of sheet metal would inherently have some longitudinal flexibility.

Allowable Subject Matter

7. Claims 6, 12, and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. Claims 20-30 and 32-34 are allowed.
9. The following is a statement of reasons for the indication of allowable subject matter:
Independent Claims 20 and 32 as well as their dependents all require the footwear donning device having a longitudinally curved carriage for holding a sock during donning in combination with a handle.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James G Smith whose telephone number is 703-605-4225. The examiner can normally be reached on 8:00-5:00, off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

JGS
8/25/2003

A handwritten signature in black ink, reading "Peter Nerbun". The signature is fluid and cursive, with the first name "Peter" and last name "Nerbun" clearly distinguishable.

Peter Nerbun
Primary Examiner